STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0119

In re the Matter of:

Joseph Loren Conner, petitioner,
Respondent,

vs.

Jakklyn Marie Netland,
Appellant.

Filed September 17, 2018
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-FA-09-1849

Gary A. Debele, Messerli & Kramer, P.A., Minneapolis, Minnesota (for respondent)

Jakklyn M. Netland, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Stauber, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges the district court's order determining that she is a frivolous litigant under Minn. R. Gen. Pract. 9. We affirm.

FACTS

Appellant-mother Jakklyn Netland and respondent-father Joseph Conner are the parents of a child born in November 2007. The parties never married. In December 2010, the district court granted the parties joint legal and physical custody of the child and ordered father to pay mother child support. In June 2016, mother moved to increase child support. Although mother eventually withdrew her motion, she continued to file various motions throughout the next several months.

In April 2017, father moved the district court to declare mother a frivolous litigant under Minn. R. Gen. Pract. 9. Mother, who was pro se, failed to appear at the hearing on father's motion. Following the hearing, the district court found that mother filed "15 separate motions . . . in less than a one-year period beginning in June 2016, each accompanied by voluminous written arguments and exhibits." The district court also found that mother "filed various other correspondences and has generally disregarded deadlines dictated by statutes and/or Rules of Practice," requiring "various interventions by the Court" and creating "a chaotic situation in terms of managing, reviewing, and responding to motion papers." The district court therefore determined that "mother is a frivolous litigant," and ordered that mother "not file any future motions in this matter without first submitting a draft of those motion(s) and all supporting documentation to the judicial

officer assigned to the matter and obtaining specific permission to serve and file the documents."

This appeal follows.

D E C I S I O N

Mother challenges the district court's determination that she is a frivolous litigant under Minn. R. Gen. Pract. 9, arguing that (1) the district court failed to apply the proper procedure in granting father's motion; and (2) the record does not support the district court's decision. We review a district court's determination that a party is a frivolous litigant for an abuse of discretion. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007) (citing *Clark v. Clark*, 642 N.W.2d 459, 465–66 (Minn. App. 2002), and stating in a parenthetical that the "use of an incorrect standard to resolve an issue constitutes an abuse of discretion").

I. The district court applied the proper procedure under rule 9.

A "frivolous litigant" is "[a] person who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate" the validity of the judgment or any "cause of action, claim, controversy" or any other issue determined by the judgment. Minn. R. Gen. Pract. 9.06(b)(1). A person also may be considered a frivolous litigant if he or she "repeatedly serves or files frivolous motions, pleadings, [or] letters" or uses other "tactics that are frivolous or intended to cause delay." *Id.* (b)(2)–(3).

Mother argues that the district court neglected to "follow the procedural rules as outlined by Minn. R. Gen. Pract. 9" by failing to "fully address and make proper findings according to Minn. R. Gen. Pract. 9.02(b)." Rule 9.02(b) provides that in "determining

whether to require security or to impose sanctions," the district court must consider: (1) the number of claims pursued with an adverse result; (2) whether the party has a "reasonable probability" of prevailing on the claim, motion, or request; (3) "whether the claim, motion, or request was made for purposes of harassment, delay, or vexatiousness, or otherwise in bad faith"; (4) "injury incurred by other litigants" and "to the efficient administration of justice as a result of the claim, motion, or request"; (5) the "effectiveness of prior sanctions in deterring" the behavior; (6) whether "imposing sanctions will ensure adequate safeguards"; (7) "whether less severe sanctions will sufficiently protect the rights of other litigants, the public, or the courts"; and "any other factors relevant." *Id.*, 9.02(b).

In *Szarzynski*, the district court ruled that the appellant was a "nuisance litigant" without citing any authority. 732 N.W.2d at 295. This court determined that the district court abused its discretion because it did not refer to rule 9, did not address the definition of a frivolous litigant, and did not make an express determination that any less-severe sanction would dissuade the appellant's behavior. *Id.* at 294–95.

Here, unlike in *Szarzynski*, the district court cited to rule 9 and made findings of fact as to why mother is a frivolous litigant. Moreover, although the district court did not specifically cite rule 9.02(b), or make specific findings as to each of the seven factors, the rule does not require such findings. Rather, rule 9.02(b) requires that the district court *consider* the seven factors. The district court's order reflects its due consideration of these factors. Specifically, the court found that mother filed 15 separate motions in less than a one-year period, that her motions were "accompanied by voluminous written arguments and exhibits," that she has "generally disregarded deadlines dictated by statutes and/or

Rules of Practice," that she brought motions that she later withdrew, that many of her motions were "without any legal basis" and redundant, and that father incurred significant attorney fees as a result of her conduct. The district court therefore properly considered the factors set forth in rule 9.02(b).

Mother also contends that the district court's order does not contain an express determination under Minn. R. Gen. Pract. 9.02(c) that "[a]n order imposing preconditions on serving or filing new claims, motions, or requests shall only be entered with an express determination that no less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts." We agree that the district court's order does not contain such a determination, and the court therefore erred by failing to follow the procedural guidelines set forth in rule 9.

But we "must disregard any error . . . [that] does not affect the substantial rights of the parties." Minn. R. Civ. P. 61; *see also Warwick v. Warwick*, 438 N.W.2d 673, 677–78 (Minn. App. 1989) (affirming district court's maintenance award by finding that court made implicit finding of bad faith based on record even though it did not satisfy procedural requirement of making explicit bad-faith determination). Here, the district court's error does not affect mother's substantial rights, whom the court found to have filed 15 separate motions in less than a one-year period beginning in June 2016, "each accompanied by voluminous written arguments and exhibits." As a matter of common sense, the district court was left with no other course of action than to declare mother a frivolous litigant. Moreover, at the hearing, the court discussed with father's counsel the various sanctions available, including financial sanctions or having the court screen mother's motions.

Because the record supports a determination that the district court imposed a less-severe sanction than was available, remand for additional findings is unnecessary. *See Nyberg v. R.N. Cardozo & Brother, Inc.*, 67 N.W.2d 821, 824 (Minn. 1954) ("Remanding the case for additional findings would serve no useful purpose since it clearly appears that all available evidence on the issues has been presented and considered."). Any error in failing to adhere to the procedural requirements contained in rule 9.02(c) is therefore harmless.

II. The record supports the district court's determination that mother is a frivolous litigant.

On appeal, a district court's factual findings are given "great deference" and will not be set aside unless clearly erroneous. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 2, 2002). A factual finding is clearly erroneous only if it is "against logic and the facts on record." *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016) (quotation omitted). "When determining whether findings are clearly erroneous, [an] appellate court views the record in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Mother argues that the district court's "findings are not supported by the record, as the record clearly shows that [she] did not file 15 claims over a period of one year." Mother also claims that her motions were meritorious, submitted in "good faith," and therefore not frivolous. Mother is wrong; she did file 15 separate motions. And we disagree that her motions were submitted in good faith and therefore not frivolous.

The function of "an appellate court does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings," and an appellate court's "duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings." *Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951); *see also Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (applying this aspect of *Wilson* in family-law case), *review denied* (Minn. Apr. 17, 2018). Here, the district court's well-reasoned order sets out in great detail the 15 separate motions and filings made by mother since June 2016. The record supports these findings, as well as the court's findings with respect to mother's incessant litigation and filing of voluminous written arguments and exhibits. And despite mother's claim that her motions and arguments were meritorious, the record, when viewed in the light most favorable to the district court's findings, demonstrates otherwise, particularly in light of mother's lack of success in making her arguments. We conclude that the record supports the court's findings, and that the district court did not clearly err in determining that mother is a frivolous litigant.

Finally, mother challenges the "overly broad" conditions imposed by the district court in the order declaring her a frivolous litigant. But the court contemplated the factors set forth in rule 9.02(b), as required when "determining whether to require security or impose sanctions." Upon consideration of these factors, the district court determined that preconditions were warranted. The record supports the court's findings with respect to these factors and, in light of the findings, the court properly exercised its discretion by imposing preconditions on mother.

The record also reflects that the district court considered the various sanctions or preconditions that it could impose on mother, including more serious sanctions. For example, at the October 4 hearing, father's counsel requested that the district court "impose some kind of requirement or precondition for [mother] to file any further motions." Counsel acknowledged that a financial "bond" did not "make sense" since mother is pro se, and admitted that a condition that mother's motions be "screened in some fashion before she files them," does not "relieve the burden" from the court. The court then discussed additional options with father's counsel. The district court properly considered the various sanctions available and provided preconditions narrowly tailored to control mother's filings so that they would not prejudice father, while still providing mother with adequate access to the courts to address legitimate concerns. The district court properly exercised its discretion in declaring mother a frivolous litigant and by imposing preconditions on her filing new claims.

Affirmed.